

**REPUBLIC OF LAND KENYA**  
**ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELCLPET. NO. E064 OF 2024**

**IN THE MATTER OF: ARTICLES 19, 20, 21, 22, 23, 70, 165, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA.**

**IN THE MATTER OF: ARTICLES 1, 2, 3(1), 10, 24, 27, 28, 40, 42, 43, 47, 48, 60, 64, 69 AND 72 OF THE CONSTITUTION OF KENYA, AS WELL AS THE FOURTH SCHEDULE THERETO.**

**IN THE MATTER OF: SECTIONS 3, 9, 87, 88, 90, 108, 111, 140, 142, 144 AND 145 OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, CAP 387.**

**IN THE MATTER OF: SECTIONS 116 AND 117 OF THE COUNTY GOVERNMENTS ACT.**

**IN THE MATTER OF: THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT.**

**IN THE MATTER OF: SECTIONS 116, 117 AND 118 OF THE PUBLIC HEALTH ACT.**

**IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTIONS ACT.**

**IN THE MATTER OF: THE ENFORCEMENT OF RIGHTS AND FUNDAMENTAL FREEDOMS.**

**IN THE MATTER OF: REGULATION 4 AND 11 OF THE MANAGEMENT AND CO-ORDINATION (WASTE MANAGEMENT) REGULATIONS, 2016.**

**IN THE MATTER OF: SECTIONS 4 AND 13 OF THE ENVIRONMENT AND LAND COURT ACT.**

**BETWEEN**

**NAIROBI INSTITUTE OF TECHNOLOGY LIMITED .....1<sup>ST</sup>**

**PETITIONER/APPLICANT**

**ST MARIE EUGENIE SCHOOL.....2<sup>ND</sup>**

**PETITIONER/APPLICANT**

**THE ESTATE OF LUCY WAMBUI.....3<sup>RD</sup>**

**PETITIONER/APPLICANT**

**JOJAKIS INVESTMENTS LIMITED.....4<sup>TH</sup>**

**PETITIONER/APPLICANT**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT.....1<sup>ST</sup>**

**RESPONDENT/CONTEMNOR**

**THE GOVERNOR, NAIROBI CITY COUNTY.....2<sup>ND</sup>**

**RESPONDENT/CONTEMNOR**

**THE CECM OF GREEN NAIROBI (ENVIRONMENT, WATER, FOOD AND AGRICULTURE), NAIROBI CITY COUNTY.....3<sup>RD</sup>**

**RESPONDENT/CONTEMNOR**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....4<sup>TH</sup>**

**RESPONDENT**

**THE. HON. ATTORNEY GENERAL.....5<sup>TH</sup>**

**RESPONDENT**

**AND**

**MUTHANGARI POLICE STATION.....1<sup>ST</sup> INTERESTED PARTY**

## RULING

1. Before this court for determination is the notice of motion dated 19<sup>th</sup> December, 2024 filed by petitioner/applicants, and it is expressed to be anchored under **Sections 3, 4(1) (a), 5, 27 and 28 of the Contempt of Court Act, Sections 1A and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules**, seeking the following orders:-

**1. Spent.**

**2. That this honourable court be pleased to issue summons and/or notice to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/ contemnors to appear before this court and show cause why they should not be cited for contempt and committed to civil jail for such term or condemned to such other penalties as the court may deem fit.**

**3. That this honourable court be pleased to cite the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> and 4<sup>th</sup> respondents/ contemnors for contempt of court and commit them to civil jail for a term of six months and/or order them to purge the contempt of court on terms this court will deem just.**

**4. That this honourable court be pleased to order the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/ contemnors to immediately comply with the orders given on 4<sup>th</sup> of November, 2024 by immediately commencing the collection of garbage/ refuse already dumped within and/or next to the petitioners/ applicants' suit properties and further avert any**

***dumping of fresh garbage at the locus-in-quo, within 24 hours of service of the ex parte orders to be issued herein.***

- 5. That if the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors do not commence the process of garbage collection and the averting of any further dumping of fresh garbage at the locus-in-quo within the specified 24 hours, the petitioners/ applicants be allowed to block the access to the illegal dumpsite where the dumping has been occurring.***
- 6. That the 4<sup>th</sup> respondent be ordered to take the necessary steps and measures to enforce its restoration order dated 4<sup>th</sup> September, 2024 and issued to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/ contemnors requiring the closure of the illegal dumpsite created at the locus-in-quo.***
- 7. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors be ordered to be filing a monthly report indicating the status of the collection of the existing garbage/refuse at the locus-in-quo and further showing the actions being undertaken to avert any further dumping of fresh garbage at the subject parcels of land and public roads.***
- 8. That this honourable court be pleased to issue orders to the 1<sup>st</sup> Interested Party, to provide security and enforcement to facilitate the implementation of the orders for blocking the access to the illegal dumpsite and enforcement of the restoration order dated 4<sup>th</sup> September, 2024.***

**9. That costs of this application be borne by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors.**

2. The instant application is premised on the grounds on its face and further supported by the affidavit of Meshack Mitau Kimanzi, the learned counsel for the petitioners/applicants which is sworn on even date. The learned counsel deposed that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors are in contempt of the consent order recorded in this court on 4<sup>th</sup> of November, 2024 in their presence and requiring the removal of garbage accumulated on the petitioners/applicants land parcels by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors. Further, that the court directed the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors to undertake garbage and refuse collection from the locus-in-quo within seven (7) days from 4<sup>th</sup> of November, 2024 and prevent any more dumping of fresh garbage at the locus-in-quo to avert any further mounting of garbage thereon which they have willfully failed to do.
  
3. The learned counsel deposed that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors have failed to comply with the restoration order issued by the 4<sup>th</sup> respondent on 4<sup>th</sup> September, 2024 concerning the subject matter and the field visit report dated 11<sup>th</sup> September, 2024 containing the finding that the 1<sup>st</sup> respondent/contemnor failed to clear away the

accumulated garbage deposited on the petitioners'/applicants' properties as directed in the aforesaid restoration Order.

4. The learned counsel further deposed that by disobeying the orders of this court dated 4<sup>th</sup> November, 2024 the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors have failed to discharge their mandate pursuant to **Article 42 and 69** of the **Constitution** as read together with **Sections 87 and 88** of the **Environment Management and Coordination Act (EMCA)**.
5. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors opposed the application through the replying affidavit of John P. Malawi sworn on 21<sup>st</sup> January, 2025 in his capacity as the Director of Environment, Natural Resources and Climate Change for the 1<sup>st</sup> respondent/contemnor.
6. He deposed that the illegal dumping of waste on the subject land is high in terms of volume hence the short timelines given by this court vide the consent order dated 4<sup>th</sup> November, 2024 for clearing the waste from the locus-in-quo which is incapable of compliance. Further, that the illegal dumping of waste within the boundaries of Nairobi County is a long-running problem which the 1<sup>st</sup> respondent/contemnor is addressing by procuring more garbage trucks as attested to in photographs

- marked as “JPM-2” and by constituting teams to investigate the source of illegal waste dumping within the County.
7. The 1<sup>st</sup> respondent/contemnor further deposed that in compliance with this court’s order dated 4<sup>th</sup> September, 2024 the 1<sup>st</sup> respondent/contemnor removed over 200 truckloads of waste from the locus-in-quo as indicated in the annexure marked “JPM-1”, however, illegal waste dumping on the subject site continued thereafter.
  8. The 1<sup>st</sup> respondent/ contemnor filed a supplementary affidavit sworn 26<sup>th</sup> February, 2025. The 1<sup>st</sup> respondent/contemnor deposed that investigations revealed that unknown youths were responsible for dumping waste on the land in question due to the long distance between the locus-in-quo and the official dumping site located in Dandora area.
  9. The 2<sup>nd</sup> petitioner/applicant filed a further affidavit sworn by SR. Nancy Wambui Njari on 5<sup>th</sup> March, 2025 in her capacity as its Director, in response to the supplementary affidavit filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors. It was deposed that the continued presence of a dumpsite on the subject properties has impacted educational activities provided to the public by the 2<sup>nd</sup> petitioner/applicant in violation of **Article 43** of the **Constitution of Kenya** in addition to abusing the petitioners’/ applicants right to a clean and healthy environment under **Article 42**.

- 10.** Further, that the photographs of the locus-in-quo marked “NWE-1” dated 4<sup>th</sup> March, 2025 clearly show that accumulated waste dumped on the subject land which is indicative of non-compliance with the order of the court by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors.
- 11.** The learned counsel for the petitioners/applicants filed a further affidavit sworn on 22<sup>nd</sup> January, 2025. He reiterated the averments contained in his supporting affidavit.
- 12.** The instant application was canvassed through written submissions. The petitioners/applicants filed their written submissions dated 28<sup>th</sup> May, 2025. They submitted that the efforts claimed to have been undertaken by the 1<sup>st</sup> respondent/contemnor in compliance with the order dated 4<sup>th</sup> November, 2024 cannot be verified. Further, that the 1<sup>st</sup> respondent/contemnor ought not be allowed by this court to shift its constitutional and legal obligations to unidentified groups of youth.
- 13.** The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors filed their written submissions dated 18<sup>th</sup> July, 2025. They submitted that that the efforts made to clear away waste from the locus-in-quo have been frustrated by continued dumping of waste on the

site by youths who engage in the business of waste disposal and who ferry waste using hand carts.

14. It was further submitted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors are not in willful disobedience of the orders of this court as enunciated by the courts in **Samuel M. N. Mweru & Others vs The National Land Commission And 2 Other, No. 443 of 2017**, and, **Gatharia K. Mutikika v Baharini Farm Ltd [1985] KLR 227**.

15. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors submitted that the waste dumped at the locus-in-quo is of a high magnitude, defying removal within a fortnight as directed by this court. Reliance was placed in the case of **Martin Osano Rabera & another v Municipal Council of Nakuru & 2 others [2018] eKLR**, to buttress the position that contempt cannot lie where compliance with an order of the court is rendered impractical.

16. I have carefully analyzed and considered the application, the replies thereof and the written submissions filed by the respective parties. The issue for determination is *whether the contempt application before the court is merited*.

17. **Section 5 of the Judicature Act** provides as follows:-

***“The High Court and the Court of Appeal shall have the same power to punish for contempt of***

***court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.***

***An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”***

- 18.** Applying its mind to the provisions of **Section 5** of the **Judicature Act**, the court in **Refrigeration and Kitchen Utensils Ltd -vs- Gulabchand Popatlal Shah & Another, - Civil Application No.39 of 1990**, held as hereunder:-

***“[.] It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times.”***

- 19.** The petitioners/applicants argued and submitted that the consent order dated 4<sup>th</sup> November, 2024 was recorded in the presence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors hence they cannot claim that they were not notified of its existence.
- 20.** Relying on the annexures marked “**JPM-1**” and “**JPM-2**”, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors claimed that waste removal was undertaken on the subject land only for the site

to be refilled by unknown youths. The consent order issued on 4<sup>th</sup> November, 2024 directed the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors to remove the waste dumped at the locus-in-quo completely as distinguished from partly. Therefore, the position adopted by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors that partial waste removal was carried out pursuant to that decision cannot and does not amount to compliance with the aforesaid Order of this court.

**21.** More importantly, and while I note that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors were present in court when the consent order was issued, and if at all they felt that the timelines given by the court were impractical or insufficient, there was nothing stopping them from seeking more time to do so. Further, the 1<sup>st</sup> respondent/contemnor is well-placed to coordinate with the country's security formations to ensure that no further dumping of waste takes place at the locus-in-quo. In the premises, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors position that unknown youths continue to dump waste at the site in question cannot operate to waive their constitutional and statutory obligations with regard to waste disposal.

**22.** I am of the view that the continued accumulation of waste at the locus-in-quo is a continuing violation of the right to a clean and healthy environment by members of the public who

consume educational and other services offered by the 2<sup>nd</sup> petitioner/applicant.

**23.** From the above, I find merit in the notice of motion dated 19<sup>th</sup> December, 2024 and the same is allowed as follows: -

***i. The 4<sup>th</sup> respondent is hereby ordered and directed to take the necessary steps and measures forthwith to enforce its restoration order dated 4<sup>th</sup> September, 2024 and issued to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/ contemnors requiring the closure of the illegal dumpsite created at the locus-in-quo.***

***ii. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors are hereby ordered and directed to file a status/progress report after every two weeks indicating the status of the collection of the existing garbage/refuse at the locus-in-quo and further showing the actions being undertaken to avert any further dumping of fresh garbage at the subject parcels of land and public roads until further orders are issued.***

***iii. The 1<sup>st</sup> interested party, is hereby ordered to provide security and enforcement to facilitate the implementation of the orders preventing the access to the illegal dumpsite and enforcement of the restoration order dated 4<sup>th</sup> September 2024.***

***iv. The costs of this application be borne by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents/contemnors.***

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY  
THIS 19<sup>TH</sup> DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.  
JUDGE  
19/01/2026.**

**In the presence of:**

*Ms. Vena Aron - Court assistant*

*Ms. Ruth Kiunga holding brief for Mr. Erick Theuri (senior  
counsel) for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents*

*Ms. Nanjala holding brief for Mr. Kimanzi for the  
Petitioner/Applicant*